The two grounds of demurrer placed the plaintiff in a dilemma: if the bankruptcy terminated the contract, the defendant never was liable; if, on the other hand, the defendant was liable for the breach, the liability was a provable claim against him and was discharged. It is to be regretted that the Supreme Court did not see fit even so much as to intimate which view it inclined to take on the mooted question of the provability of claims arising from anticipatory breach of executory contracts by the intervention of bankruptcy proceedings. There seems to be a sharp conflict of opinion among the inferior federal courts on this point. In support of the provability of such claims for damages, are the following cases: *In re Pettingill,* 137 Fed. 143; *In re Swift,* 105 Fed. 493, 112 Fed. 315; *In re Scott Transfer Co.,* 216 Fed. 308; *In re Duquesne Incandescent Light Co.,* 176 Fed. 785; *In re Neff,* 157 Fed. 57; *In re National Wire Corp.,* 166 Fed. 631; *Wood* v. *Fisk,* 156 App. Div. (N. Y.) 497. CONTRA: *In re Imperial Brewing Co.,* 143 Fed. 579; *In re Inman,* 175 Fed. 312.

BANKRUPTCY—JURISDICTION OF COURT—SUMMARY PROCEEDINGS.—A court of bankruptcy is without jurisdiction in a summary proceeding to decree specific performance of a contract made by a bankrupt, by directing his trustee to execute a conveyance of land. *Dreyer* v. *Perkins,* (C. C. A. 1914) 217 Fed. 889.

A careful search fails to disclose an instance in which this question has been presented heretofore. Within the limits of their own particular subject matter, courts of bankruptcy in a limited sense possess the powers of courts of equity and may take cognizance of equitable rights and may administer equitable relief. *In re Swofford Bros. Dry Goods Co.,* 180 Fed. 549; *In re Gillaspie,* 190 Fed. 88; *In re Siegel-Hillman Dry Goods Co.,* 111 Fed. 980; *In re Rochford,* 124 Fed. 182. But they are special creatures of statutory law and all their jurisdiction is derived from the act which creates them. *Jobbins* v. *Montague,* Fed. Cas. No. 7330; *In re Williams,* 120 Fed. 38. In accord with the principal case, it is submitted that none of the twenty enumerated powers set forth in § 2 of the Bankruptcy Act of 1898 justifies an attempt on the part of a court of bankruptcy to exercise jurisdiction over a cause of action which does not arise primarily out of a suit in bankruptcy pending before it.

BANKRUPTCY—TITLE OF TRUSTEE—PROPERTY FRAUDULENTLY CONVEYED.—A bankrupt's mother, soon after being sued by a creditor in February, 1912, transferred all her real estate to the bankrupt for a nominal sum and in the spring of 1912 the bankrupt—who had agreed to buy the leasehold, personal property, etc., connected with a hotel property—conveyed the real estate thus obtained from his mother to his grantor in part payment of the purchase price thereof. The creditor of the bankrupt's mother, having obtained a judgment, subsequently in January, 1913, instituted a suit in equity jointly against the bankrupt and his mother to set aside the transfer of the real estate, and in the following October, obtained a decree finding that the transfer was fraudulent, and that property of the mother, equal to $13,700 had passed into the hotel, which the mother's creditor was entitled to have

applied on its claim against the mother. Shortly thereafter the son was adjudged bankrupt and the property of the hotel was sold for a lump sum; the proceeds, however, being subject to a lien in favor of the landlord with reference to the furniture, fixtures, etc., and in favor of a bank on the unexpired leasehold. *Held,* that the proceeds of the mother's realty fraudulently conveyed to the bankrupt having been traced into the proceeds of the sale of the hotel property, the mother's creditor was entitled to the balance remaining after satisfying the liens of the landlord and the bank. *In re Benz,* (C. C. A., 1914), 218 Fed. 50.

Since the creditor's bill in equity was filed more than four months previous to the date of bankruptcy, a lien was obtained at the time of filing, similar to a lien obtained by issuing an execution against the bankrupt's property. No question of unlawful preference arises, as § 67 f does not invalidate a lien obtained by the levy of an attachment more than four months previous to the bankrupt proceedings, though dependent for enforcement on a judgment obtained within four months. *Metcalf* v. *Barker,* 187 U. S. 165; *In re Crafts-Riordon Shoe Co.,* 185 Fed. 931; *In re U. S. Graphite Co.,* 161 Fed. 583; *In re Beaver Coal Co.,* 113 Fed. 889; *In re Blair,* 108 Fed. 529; *Jackson* v. *Valley Tie and Lumber Co.,* 108 Va. 714; *Pepperdine* v. *Bank of Seymour,* 73 S. W. 890; *Wakeman* v. *Throckmorton,* 74 Conn. 616. The bankrupt was manifestly not using his own property when he transformed his mother's real estate into the several kinds of property purchased therewith. He never became the owner of the equitable interest which his mother's creditor's held in her estate and had no right to apply to his own interest that advantage. The bankrupt's creditors had a right to share in proceeds of *his* property; but they can have no claim, legal or equitable, on the proceeds of what belonged in equity to another and which never did belong to the bankrupt at any time. The bankrupt was constructive trustee thereof and his successor, the trustee in bankruptcy, stood in no better position. *National Bank* v. *Insurance Co.,* 104 U. S. 54, 68; *Erie R. Co.* v. *Dial,* 140 Fed. 689; *Knatchbull* v. *Hallett,* 13 Ch. Div. 696, 719-20; *Holder* v. *Western German Bank,* 136 Fed. 90; *In re Hamilton Furniture & Carpet Co.,* 117 Fed. 774, 776; *Standard Oil Co.* v. *Hawkins,* 74 Fed. 395, 400; *Ex Parte James, In re Condon,* 9 Ch. App. 609, 614; *In re Larkin & Metcalf,* 202 Fed. 572.

BANKS AND BANKING—DEPOSITOR'S RIGHT TO SET OFF DEPOSITS, WHERE NATIONAL BANK IS INSOLVENT.—Defendant, a stockholder and depositor in the First National Bank, indorsed a note, made for his accommodation by one X., to that bank. The bank became insolvent, its receiver brought suit on the note, and in another count sought to recover an assessment on defendant's shares of stock to enforce his double stock liability. Defendant claimed the right to set off his unpaid deposits in the bank against the amount of the note and the assessment. *Held,* the set-off should be granted as against the note but not as against the assessment. *Williams* v. *Rose,* (1914) 218 Fed. 898.

Before the case of *Yardley* v. *Clothier,* 51 Fed. 506, 17 L. R. A. 462, the weight of authority was that an indorser could not set off his deposit bal-